

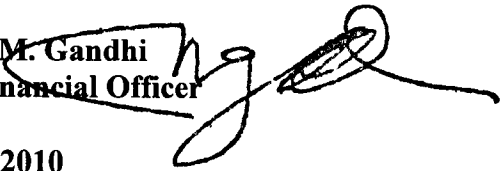
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: April 8, 2010

SUBJECT: Fiscal Impact Statement – “Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010”

REFERENCE: Bill Number 18-655, As Introduced

Conclusion

Funds are sufficient in FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation.

While this legislation expands the base for the transient accommodations tax, the immediate revenue implications are unknown due to potential litigation.

Background

The intent of the proposed legislation is to amend Title 47 of the D.C Official Code to require that when a hotel room or other similar accommodations was booked or otherwise arranged by a room remarketer,¹ the transient accommodations tax rate, which is currently 14.5 percent, would be applied to the total amount charged to the transient by the room remarketer, instead of to the amount charged to the room remarketer by the hotel, as is the current practice.

Room remarketers, such as Hotels.com, Orbitz, Travelocity and Expedia.com, generally operate by paying a hotel a lower-than-market rate for a certain quantity of rooms and then charging a marked-up price to the consumer who use their services to book the room. Currently the transient

¹ As defined in the proposed legislation, a room remarketer means any person, other than the retailer, having any right, access, ability or authority, through an internet transaction or any other means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax.

accommodations tax is only collected on the lower room price the remarketer paid to the hotel and not the higher marked-up price paid by the consumer. For instance, if Orbitz pays Hotel X \$1,000 for 20 rooms, Hotel X will charge Orbitz the sales tax on the \$1,000, and will remit to the Office of Tax and Revenue (OTR) a total of \$145 in transient accommodation taxes for these rooms. Orbitz, though, could mark-up the rooms by 10 percent and end up collecting \$1,100 from its customers; however, it would not pay the sales tax on this extra \$100. This legislation would ensure that the transient accommodations tax be paid on the total collected by Orbitz (\$1,100) and not the original amount Orbitz gave Hotel X (\$1,000).

Taxing of the incremental revenue generated by the internet based remarketer is a very controversial issue and one that has been the subject of a great deal of litigation. The reasons behind the litigation vary from locality to locality and depend on how the locality's law is written, as well as whether the courts see room remarketers or online travel companies (OTCs) as hotel operators or simply facilitators.² The majority of the litigation has been because localities have filed suit against OTCs for back taxes and the OTCs have then filed suit against the localities. More than 200 such cases have been filed by places such as Los Angeles, San Diego, Chicago, Atlanta, Orlando, Louisville, San Antonio (with 172 other cities), Nassau County in New York, Pitt County in North Carolina, and Florida. So far the results of these cases has been mixed: in Anaheim, it was first determined that the OTCs owed the city \$21.3 million, but recently that ruling was overturned; a class-action civil lawsuit brought on behalf of 173 of Texas' cities and towns resulted in a \$20.6 million verdict, but the OTCs are fighting the ruling, and cases have been dismissed in Louisville and Houston, among other localities. To our knowledge, to date no money has been collected from OTCs in any of these rulings.

More apropos is litigation that has resulted from a change in legislation. In September 2009, New York City enacted legislation that requires the hotel tax be applied to the full room occupancy charge that a guest pays regardless of how the room is booked. However, in December 2009, a group of major OTCs filed suit against New York City to stop the extension of the hotel tax. While the NYC Department of Finance has begun collecting this tax, at this time, is unclear whether they will be able to keep the collections.

Financial Plan Impact

Funds are sufficient in FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation. . Given the experience of other localities, it is highly likely that passage of the proposed legislation would result in a lawsuit. Thus, while this proposed legislation could result in additional tax revenues³, it is not possible to guarantee that the District would see any of these tax revenues in the four year budget and financial plan, or if it did, when this would occur, since no clear verdict has been reached on this issue through the courts.

² In terms of the latter, OTCs make the case that they are providing a service and that the mark-up in price is the cost of that service. As such it should not be subject to the accommodations tax.

³ An independent entity, not affiliated with the OCFO, estimated the additional revenue to be between \$4 and \$7.5 million per year.